

INDIANA DEPARTMENT OF STATE REVENUE

REVENUE RULING #2000-05IT

December 4, 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

- I. Gross Income Tax – Limited Partnership Electing to be Treated as a Corporation for Federal Income Taxation

Authority: IC 6-2.1-3-25

The taxpayer requests the Department to rule on the application of gross income tax to the gross income of a limited partnership electing to be treated as a corporation for federal income taxation.

- II. Adjusted Gross Income Tax and Supplemental Net Income Tax - Limited Partnership Eligibility for Consolidated Filing

Authority: IC 6-3-4-14, IRC Section 1504, Treas. Reg. 301.7701-(1-3), IRC 7701

The taxpayer requests the Department to rule whether or not a limited partnership electing to be treated as a corporation for federal income taxation is eligible to participate in an Indiana consolidated adjusted gross income tax and supplemental net income tax return.

STATEMENT OF FACTS

The taxpayer, a publicly traded corporation, is engaged in the sale and distribution of wireless communication products and accessories around the world including North America.

The taxpayer has a wholly-owned subsidiary (subsidiary) that, also, engages in the sale and distribution of wireless communication devices in North America.

The taxpayer and its subsidiary would like to combine their North American business operations into a single entity. They intend to form a limited partnership (partnership) under Delaware law for this purpose. The taxpayer will contribute all of its North American Division operations to the partnership (the taxpayer will not contribute, however, the Latin American Division nor the Corporate Division operations). The subsidiary will contribute all of its business operations and transfer all of its employees to the partnership. The taxpayer's subsidiary will be the general partner and the taxpayer will be the limited partner of the partnership holding 100% of the partnership interests between them. For federal tax purposes, the partnership will elect to be treated as a corporation under Section 7701 of the Internal Revenue Code and the regulations promulgated thereunder. Specifically, the partnership will make an election pursuant to Treasury Regulation 301.7701-(1-3) to be classified as an association and taxed as a corporation.

ISSUE #1 - DISCUSSION

IC 6-2.1-3-25 provides that gross income received by a partnership is exempt from Indiana gross income taxation unless the gross income is received by a publicly traded partnership that is treated as a corporation for federal income tax purposes under Section 7704 of the Internal Revenue Code. The Indiana Gross Income Tax Code does not contain provisions that address the applicability of gross income tax to the gross income of a partnership that has elected to be treated as a corporation for federal income tax purposes. The aforementioned IC 6-2.1-3-25, therefore, is the authority for determining the applicability of gross income tax to the gross income of partnerships regardless of the treatment of the partnership at the federal level, i.e., the federal election has no impact on the gross income taxation of partnerships.

In the instant case then, the partnership will not be a public-traded partnership that is treated as a corporation under Section 7704 of the Internal Revenue Code, therefore, the partnership will be exempt from Indiana gross income taxation.

ISSUE #1 - RULING

The Department rules that the gross income received by the partnership will not be subject to Indiana gross income tax.

ISSUE #2 – DISCUSSION

IC 6-3-4-14 provides that an affiliated group of corporations shall have the privilege of making a consolidated adjusted gross income tax return. The term "affiliated group"

means an "affiliated group" as defined in Section 1504 of the Internal Revenue Code with the exception that the affiliated group shall not include any corporation which does not have adjusted gross income derived from sources within the State of Indiana. Internal Revenue Section 1504 states that "affiliated group" means;

(a)(1)(A)-1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if –

(B)(i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and

(ii) stock meeting the requirement of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.

(2) 80-percent voting and value test. – The ownership of stock of any corporation meets the requirement of this paragraph if it -

(A) possesses at least 80 percent of the total voting power of the stock of such corporation, and

(B) has a value equal to at least 80 percent of the total value of the stock of such corporation.

Here, the taxpayer and its subsidiary are part of an "affiliated group" as defined by Internal Revenue Code Section 1504. The partnership, electing to be classified as an association and taxed as a corporation [Treas. Reg. 301.7701(1-3)], also, is part of the taxpayer's Internal Revenue Code Section 1504 "affiliated group" as the term "corporation" includes associations and the term "stock" includes shares in associations pursuant to Internal Revenue Code Section 7701. As a result, to the extent that the taxpayer, its subsidiary and the partnership have adjusted gross income derived from sources within the State of Indiana, the taxpayer, its subsidiary and the partnership are eligible to participate in an Indiana consolidated adjusted gross income tax and supplemental net income tax return (IC 6-3-8-2).

ISSUE #2 – RULING

The Department rules that the taxpayer, its subsidiary and the partnership are eligible to participate in an Indiana consolidated adjusted gross income tax and supplemental net income tax return to the extent all members of the affiliated group have adjusted gross income derived from sources within the State of Indiana.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

DEPARTMENT OF STATE REVENUE